

**THE VIRGINIA BOARD OF MEDICINE  
MINUTES  
FEBRUARY 6, 2003**

**PUBLIC HEARING**

A public hearing was held at 8:30 a.m. on the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic on changes in the physician profile and voluntary practice by out-of-state practitioners.

The Virginia Board of Medicine met on February 6, 2003, at 8:00 a.m., at the Department of Health Professions ("DHP"), 6603 West Broad Street, Richmond, Virginia. Harry C. Beaver, MD, President, called the meeting to order. Dr. Beaver declared a quorum.

**MEMBERS PRESENT:**

Harry C. Beaver, MD, President  
J. Kirkwood Allen, Vice President, Citizen Member  
Diane Reynolds-Cane, MD, Secretary/Treasurer  
James F. Allen, MD  
Robert J. Bettini, MD  
Carol Comstock, RN, Citizen Member  
Malcolm L. Cothran, Jr., MD  
Cheryl Jordan, MD  
Joseph A. Leming, MD  
Gary P. Miller, MD  
Sue Ellen B. Rocovich, DO  
Cedric B. Rucker, Citizen Member  
Clarke Russ, MD  
Rev. LaVert Taylor, Citizen Member  
Kenneth J. Walker, MD  
Jerry R. Willis, DC

**MEMBERS ABSENT:**

Thomas B. Leecost, DPM (on active military duty)  
Robert P. Nirschl, MD

**STAFF PRESENT:**

William L. Harp, MD, Executive Director  
Ola Powers, Deputy Executive Director, Licensure  
Karen Perrine, Deputy Executive Director, Discipline  
Kate Nosbisch, Deputy Executive Director, Physician Profile  
Robert Nebiker, Director, DHP  
Elaine Yeatts, DHP Senior Regulatory Analyst  
Deborah A. Ordiway, Recording Secretary

**OTHERS PRESENT:**

Roscoe Roberts, Assistant Attorney General

**GUESTS PRESENT:**

Annette Ernst, OT, Advisory Board on Occupational Therapy;  
David Pawlowski, chair, Advisory Board on Athletic Training; Jody Forman, L.Ac., chair,

Advisory Board on Acupuncture; Bonnie L. McQuaid, RRT, chair, Advisory Board on Respiratory Care; Erwin E. Fender, PA-C, chair, Advisory Board on Physician Assistants; Roberta M. Heffernan, RT, chair, Advisory Board on Radiologic Technology; Evan Farmer, MD, Dean, Eastern Virginia Medical School; Susan Ward, Virginia Hospital Association; Claudette Dalton, MD, Associate Dean of UVA School of Medicine; Donna Whitney, Intervention Program Manager; Elinore McCance-Katz, MD, Medical College of Virginia; Paul Spector, DO, President, Virginia Osteopathic Medical Association; William R. Thesier, DC, President of Virginia Chiropractic Association; Larry L. Stine, DC, Virginia Chiropractic Association; Bill McKelway, *Richmond Times-Dispatch*; Bruce Dubin, DO, JD, Associate Dean at Edward Via School of Osteopathic Medicine; James M. Messmer, MD, Associate Dean of VCU School of Medicine; Clara Cribbs; Father Dan Morrissey, Board of Directors, Federation of State Medical Boards; Peter Scoles, MD, National Board of Medical Examiners; Catherine Casey, MD; Gerald J. Bechamps, MD; Warren W. Koontz, MD; Joyce Hawkins, Virginia Society of Radiologic Technologists; Randall E. Dalton, MD, President of Old Dominion Medical Society; Mike Burdick; Lauren Morgan; Mike Jurgensen, Medical Society of Virginia; and Rod Adams, Esquire

## **INTRODUCTION OF GUESTS**

Dr. Beaver welcomed the invited guests and other attendees.

## **ADOPTION OF AGENDA**

Dr. Russ requested amending the agenda to include use of computers, and Dr. Leming requested the addition of an item entitled “per diem.” Dr. Leming moved to adopt the amended agenda. The motion was seconded and carried unanimously.

## **PUBLIC COMMENT ON AGENDA ITEMS**

Evan Farmer, MD, stated that following the space shuttle Columbia disaster there was a ceremony in honor of David Brown, MD. There will also be a ceremony this Saturday, February 8, at the Eastern Virginia Medical School at 1 o'clock in honor of Dr. Brown.

Warren W. Koontz, MD, stated he was representing the Medical Society of Virginia. Dr. Koontz stated that a committee of the Medical Society of Virginia proposed to endorse the concept of a Virginia based educational program for practitioners of the Board of Medicine. They proposed an on-line educational program for all licensees of the Board of Medicine. Also, Marcella Fierro, MD, chief medical examiner for the Commonwealth of Virginia, has developed a medical-legal program at MCV, which is to be aimed at all resident students and faculty.

The Medical Society of Virginia has a committed academic medical committee that could be of help in the developing of such an educational program.

Dr. Koontz stated that the roles of the Medical Society of Virginia, the Virginia Board of Medicine and the four state medical schools and the educational program need to be clearly defined.

Finally, if the Board of Medicine or the Medical Society of Virginia formally endorsed such a program, should the program be put out for bid?

## **APPROVAL OF MINUTES OF OCTOBER 10, 2002**

Mr. Allen moved to approve the minutes of the Board, dated October 10, 2002. The motion was seconded and carried unanimously.

## **PRESENTATION OF PLAQUE TO JODY FORMAN, L.Ac.**

An award plaque was presented to Jody Forman, L.Ac., for her tenure as a member of the Advisory Committee on Acupuncture from July 1, 1998 to June 30, 2002.

## **REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR**

### President – Harry C. Beaver, MD

Dr. Russ presented a plaque to Gerald Bechamps, MD, commemorating his work as president of the Federation of State Medical Boards.

### Vice President – J. Kirkwood Allen

No report.

### Executive Director

Dr. Harp deferred his report until later on the agenda.

### Secretary/Treasurer – Dianne L. Reynolds-Cane, MD

No report.

## **COMMITTEE REPORTS**

### Executive Committee - Dr. Beaver

Dr. Cane moved to accept the minutes of the Executive Committee dated December 13, 2002. The motion was seconded and carried unanimously.

### Legislative Committee - Mr. Allen

Mr. Allen moved to accept the minutes of the Legislative Committee dated November 15, 2002 and January 24, 2003. The motion was seconded and carried unanimously.

#### Credentials Committee - Dr. Jordan

Mr. Rucker moved to accept the minutes of the Credentials Committee dated October 10, 2002 and December 13, 2002. The motion was seconded and carried unanimously.

#### Advisory Board on Physician Assistants – Mr. Fender, PA-C

Mr. Rucker moved to accept the minutes of the Advisory Board on Physician Assistants dated January 10, 2003. The motion was seconded and carried unanimously.

#### Advisory Board on Occupational Therapy – Ms. Gallagher, OT

Mr. Rucker moved to accept the minutes of the Advisory Board on Occupational Therapy dated January 9, 2003. The motion was seconded and carried unanimously.

#### Advisory Board on Respiratory Care – Ms. McQuaid, RRT

Mr. Rucker moved to accept the minutes of the Advisory Board on Respiratory Care dated January 9, 2003. The motion was seconded and carried unanimously.

#### Advisory Board on Acupuncture – Ms. Forman, L.Ac.

Mr. Rucker moved to accept the minutes of the Advisory Board on Acupuncture dated January 8, 2003. The motion was seconded and carried unanimously.

#### Advisory Board on Radiologic Technologists – Ms. Heffernan, RT

Mr. Rucker moved to accept the minutes of the Advisory Board on Radiologic Technologists dated January 8, 2003, with one correction. The motion was seconded and carried unanimously.

#### Advisory Board on Athletic Training – Mr. Pawlowski

Mr. Rucker moved to accept the minutes of the Advisory Board on Athletic Training dated January 7, 2003. The motion was seconded and carried unanimously.

#### Committee of the Joint Boards of Medicine and Nursing - Dr. Bettini

There was no meeting for the Committee of the Joint Boards of Medicine and Nursing.

### **OTHER REPORTS**

#### Board of Health Professions - Dr. Reynolds-Cane

No report.

Assistant Attorney General – Roscoe Roberts, AAG

Russell Carter, MD, case is pending in the Norfolk Circuit Court. The matter is scheduled to be heard on April 17, 2003.

Dr. Feola and Dr. Kuyendall have noted an appeal.

Department of Health Professions – Mr. Nebiker

No report.

Podiatry Report - Dr. Leecost

No report.

Chiropractic Report - Dr. Willis

No report.

**NEW BUSINESS**

Item 1: HPIP Presentation – Elinore McCance-Katz, Ph.D., MD

As of January 1, 2003, DHP has contracted with VCU Health System Department of Psychiatry, Division of Addiction Psychiatry to conduct its Health Practitioners Intervention Program. Dr. McCance-Katz of VCU is the Medical Director and Chief Operating Officer for the program. Dr. McCance-Katz did a presentation on how VCU will administer the program, and highlighted changes in how the program was previously administered.

Item 2: Clinical Skills Assessment Examination

Gerald J. Bechamps, MD, stated that at the time USMLE was developed, it was agreed that a clinical skills exam should be developed. For the last 15 years the National Board has been researching the development of a standard type of exam on live patients. These are people who are trained as standardized patients to mimic certain types of disease and answer appropriate questions. This clinical exam has been approved as an integral part of USMLE Step 2.

Peter Scoles, MD, National Board of Medical Examiners, stated that the clinical skills examination will become a part of USMLE Step 2 next year. The purpose of the USMLE clinical skills examination will parallel that of the cognitive part of Step 2. The written part of Step 2 and computer-based part of Step 2 is designed to certify that individuals have enough medical knowledge to safely enter supervised postgraduate training. The clinical skills examination certifies that they have the clinical skills necessary to conduct a focused history and physical examination, draw some preliminary conclusions, counsel patients and report that information to the next person in the medical care team. The exam will be on a pass/fail basis. There will be a

network of five to seven fixed test sites across the United States. Test centers will be initially located in Philadelphia, Atlanta, Chicago, Los Angeles and either in Houston or Dallas. The cost for the examination is about \$950 per candidate. The retake cost will be at a reduced rate. The test will begin in 2004.

Warren W. Koontz, MD, stated that the Board of Directors of the Medical Society of Virginia at its January 25, 2003 meeting passed a resolution as follows: "The Medical Society of Virginia supports the use of Clinical Skills Examinations by medical schools as a requirement of graduation. The Medical Society of Virginia does not support the use of the USMLE part 2.5 as an independent condition of licensure in the Commonwealth of Virginia."

Claudette Dalton, MD, Associate Dean of UVA School of Medicine, believes that this type of testing is both important and extremely useful. It is appropriate that the test be done at the medical school level at the end of the third year. This type of testing would not improve patient safety. No medical school has in place a program to remediate students who do poorly on this exam. Dr. Dalton asked the Board's help in finding a way to delay the coupling of this exam with licensure to work out this problem.

James M. Messmer, MD, Associate Dean of VCU School of Medicine, stated that he believes this is an important test and sees the licensing portion separate from the curriculum. Their concerns were more along the lines with the cost of the test and who is going to pay the bulk of that cost. He asked that ways to defray the cost be explored.

Evan Farmer, MD, Dean, Eastern Virginia Medical School, was in favor of the national standards. He stated there is a logistical issue for taking the test.

Bruce Dubin, DO, JD, Associate Dean at Edward Via School of Osteopathic Medicine, was in support of the Medical Society of Virginia's resolution. This type of testing needs to reside within the medical schools because the schools have years of experience in terms of evaluating their students. Do not couple in the exam with licensure.

Mike Burdick, a VCU School of Medicine student, spoke in opposition to implementing the clinical skills test.

Dr. Leming asked why the Federation doesn't at this time accept a deeming concept whereby, for example, a medical school that has a clinical skills examination could be deemed acceptable to the Federation as a qualifying examination. Dr. Scoles stated that it is not true that the examination is duplicative. Medical schools very carefully use standardized patient with teaching programs and evaluate the students in those teaching programs. It is virtually impossible to verify that one program is equivalent to another.

Dr. Leming stated that statutorily across the United States there are certain jurisdictions, which prohibit oral or manual examinations, and the insistence on this examination may statutorily prevent those jurisdictions from participating if this exam is incorporated into Step 2. Those jurisdictions would have to disassociate themselves from USMLE and reinstitute their own

licensing pathway. Dr. Scoles stated that each state's medical practice act was researched on this issue.

Dr. Leming asked if the USMLE was codified in Virginia. Mr. Roberts stated that it was not codified, but it is in the regulations.

Dr. Leming stated that he has reviewed the Code of Virginia and also reviewed the regulations of the Board of Medicine and he is concerned that there may be a statutory conflict.

## **EXECUTIVE SESSION**

Dr. Leming moved that the Virginia Board of Medicine convene a closed meeting pursuant to Section 2.2-3711(A)7 of the Code of Virginia for consultation. Additionally, he moved that Karen Perrine, Ola Powers, Elaine Yeatts, Mr. Roberts and Dr. Harp attend the closed meeting because their presence in the closed meeting is deemed necessary. The motion was seconded and carried unanimously.

The Board then reconvened in open session.

Dr. Leming moved that the report on agenda item #2, titled clinical skills assessment examination, be filed. The motion was seconded. Dr. Leming stated that based on consultation with legal counsel for the Board that the proposed examination comports with the Code of Virginia and the regulations of the Board, any other action by the Board at this time appears to be moot. The motion carried unanimously.

### **Item 3: Proposal for courses – Rod Adams, Esquire**

Mr. Adams gave an overview of his proposed program to address such issues as improper prescribing, bad ethical choices, poor documentation and boundary violations. He asked the Board's input on what is the most important and pressing issue that needs to be addressed. This would be a one-and-a-half to two-day program. Dr. Cothran suggested a class on filling out death certificates. Dr. Russ suggested contacting the Medical Society of Virginia and former board members for additional suggestions. Dr. Harp emphasized that Mr. Adams would be developing his courses independent of the Board and would compete with similar course currently available.

### **Item 4: Regulatory Actions – Ms. Yeatts**

#### ***Chart on Regulatory Actions***

Contained in the agenda packet was a copy of the Board of Medicine's regulatory actions.

#### ***Action on Final Regulations – Respiratory Care Practitioners***

The Advisory Board on Respiratory Care suggested one change to 18 VAC 85-40-60(A)(3). The current requirement for renewal of licensure is that a person be engaged in active practice. The problem with this regulation is there is no provision for a traineeship and, therefore, if



somebody is not engaged in active practice they are in a Catch-22. The recommendation was to change the wording to read as follows: "Attest that he has engaged in active practice as defined in 18 VAC 85-40-10 or present other documented evidence acceptable to the board that he is prepared to resume practice." Dr. Russ moved to accept this change. The motion was seconded and carried unanimously.

Dr. Russ moved that the Legislative Committee study the continuing education exemption for all regulations. The motion was seconded. After discussion, Dr. Russ then withdrew his motion.

Dr. Russ moved to accept the modified final regulations. The motion was seconded and carried unanimously.

### ***Action on Final Regulations – Office-based Anesthesia***

Dr. Walker moved to approve the following wording for 18 VAC 85-20-320(3): "Levels of anesthesia or sedation referred to in this chapter shall relate to the level of anesthesia or sedation intended by the practitioner in the anesthesia plan." The motion was seconded and carried unanimously.

Dr. Russ moved to approve 18 VAC 85-20-330(C)(1) that reads as follows: "On or after six months from the effective date of this regulation the doctor who provides office-based anesthesia or who supervises the administration of anesthesia shall maintain current certification in advanced resuscitation techniques." The motion was seconded and carried unanimously.

Dr. Russ moved to approve the wording for 18 VAC 85-20-330(C)(2) that reads as follows: "Any doctor who administers office-based anesthesia without the use of an anesthesiologist or certified registered nurse anesthetist shall obtain four hours of continuing education in topics related to anesthesia within the 60 hours required each biennium for licensure renewal, which are subject to random audit by the board." The motion was seconded and carried unanimously.

Mr. Rucker moved to accept the language of 85-20-320(B)(6) that reads as follows: "Remain physically present or immediately available, as appropriate, to manage complications and emergencies until discharge criteria have been met." The motion was seconded and carried unanimously.

Reverend Taylor moved to accept the elimination of the paper recorder while doing a continuous electrocardiograph from 18 VAC 85-20-360(B)(5). The motion was seconded and carried unanimously.

The Ad Hoc Committee on Office-Based Anesthesia does not believe that medical assistants should be given the authority to give sedation. The regulations state that this is to be done by a licensed doctor with a licensed nurse assisting and monitoring the patient or by a nurse anesthetist or anesthesiologist.



Ms. Yeatts stated that currently emergency regulations are in place. The proposed regulations will replace the emergency regulations. The Ad Hoc Committee felt that any contiguous clinics should meet the minimal requirements for safety.

Dr. Russ moved to accept the draft regulations and commended the ad hoc committee for their long and laborious, diligent work. The motion was seconded and carried unanimously.

Dr. Allen moved that a letter of appreciation be given to the ad hoc committee members. The motion was seconded and carried unanimously.

#### Item 5: Review of Legislation – Elaine Yeatts

##### ***House Bill 1441/Senate Bill 871***

Ms. Yeatts stated that the senate has amended House Bill 1441.

Mr. Nebiker covered the highlights of House Bill 1441.

##### ***Other Legislation***

Ms. Yeatts distributed a bill tracking report to the board members for their review.

Dr. Leming moved that with respect to proposed Senate Bill 1327 regarding limited professorial licenses that the Virginia Board of Medicine would oppose Senate Bill 1327 on the grounds of public safety. The motion was seconded and carried unanimously.

Dr. Leming moved with regard to proposed House Bill 2610 that the Virginia Board of Medicine adopt a position in opposition and further that it would support a change in the law to require two years of postgraduate training for all candidates for licensure for the board with an effective delay date of July 1, 2004. The motion was seconded and carried unanimously.

#### Item 6: Executive Director's Report – Dr. Harp

Dr. Harp asked that his report be tabled.

#### Item 7: Licensing Report – Ola Powers

For informational purposes the licensing report was contained in the agenda packet. Mrs. Powers asked the board members if they wanted the limited professorial licensees to collect and report continuing education. Dr. Leming stated this could be done by policy.

Dr. Leming moved that the board adopt a policy. The motion was seconded and carried unanimously.

#### Item 8: Discipline Report – Karen Perrine

Ms. Perrine stated that since the last Board meeting, there have been 367 cases docketed, 234 cases were closed of which 29 were with a violation, 20 informal conferences, nine formal hearings, 12 pre-hearing consent orders, and seven continuances granted. There are 17 informals to be scheduled and six formals to be scheduled. There are 1,505 open cases.

For the year 2002 there was a total of 51 loss of license actions by the board (three summary suspensions, five revocations, 28 mandatory suspensions, 10 regular suspensions, two permanent surrender of licenses, three license surrenders), three suspensions stayed on terms, 12 probations, 18 with terms and conditions, nine reinstatements denied, 11 violations, no sanctions and 12 dismissed after either an IFC or a formal hearing.

#### Item 9: Practitioner Information Project Update – Kate Nosbisch

Ms. Nosbisch stated that the 2001 group had until the end of December 31, 2001 to comply with no action taken against them. Ms. Nosbisch stated she needed the board's input for the 2002 late completes. Dr. Allen moved to give the late completes until December 31, 2002. The motion was seconded and carried unanimously.

Dr. Willis suggested noticing those practitioners that they are in violation if they have not completed their profile. Dr. Russ volunteered to sit on an accelerated docket to take care of the backlog of cases and this accelerated docket should be done before July 1, 2003. Dr. Russ said to take the oldest cases first. Dr. Russ moved that the cases should be heard over a period of one to three days and would be heard based on the order of sign up like that done for the Credentials Committee. The motion was seconded. Reverend Taylor suggested that the discipline section set the dates and then e-mail the board members for response. The motion carried unanimously.

Ms. Perrine stated she wanted to make it clear that the bottleneck is for cases other than profile, and is at the probable cause review, not at the proceedings level. Board members are needed to handle those reviews.

Ms. Nosbisch stated that the Executive Committee voted in December to include in the profiling audit easily verifiable data elements. It was suggested that this audit be done separately from the CME.

Dr. Leming moved for the separation of the audit. The motion was seconded and carried unanimously.

#### Item 10: Nominating Committee Report

The Nominating Committee met and the panel for officers for 2003-2004 is as follows:

President – J. Kirkwood Allen  
Vice President – Dianne Reynolds-Cane, MD  
Secretary/Treasurer – Carol Comstock, RN

There were no nominations from the floor. Dr. Cothran moved to vote as a slate. The motion was seconded and carried unanimously.

There were no other nominations from the floor. Dr. Cothran moved that the nominations be closed. The motion was seconded and carried unanimously.

The slate of the nominating committee carried unanimously.

#### Item 11: Discussion of Per Diem for Board Members – Dr. Leming

Dr. Leming moved the board come up with a way to remunerate Board members a reasonable amount of money, which compensates for their time out of the office in order to contribute time to the board. He proffered that the amount be in the \$500 a day range. The motion was seconded.

Dr. Leming's motion failed.

Mr. Nebiker stated there is one statute that governs the compensation to all boards in state government. The current \$50 per diem was set in 1981. Dr. Leming asked if there was a way to strike the Board of Medicine from that list. Mr. Nebiker stated there would have to be a bill introduced to make this change.

Dr. Russ moved that this matter be referred to the Legislative Committee. The motion was seconded. After discussion, Dr. Cothran called for the question.

Dr. Russ' motion carried unanimously.

Dr. Leming stated that hearings should not be conducted after the business meeting. The business meeting should be scheduled for a full day. There should be four meetings a year and those days of meetings should be allocated to the business of the board and not have hearings docketed on those days.

Dr. Russ stated that more time is needed to devote to the administrative functions of the board and the legislative functions.

Dr. Russ moved that the Executive Committee review the scheduling of the board work and adopt a four meeting a year format. The motion was seconded. Dr. Cothran stated that a timeline should be placed on presentations. The motion carried unanimously.

#### Item 12: Computers – Dr. Russ

Dr. Russ stated that he had requested information on what kind of computer software and hardware was needed to utilize the board's software package if a board member purchased their own laptop. He also proposed that the board members be given a proposal to privately purchase the laptop computers. He had never received a response. Dr. Leming stated that storing public data on your personal laptop computer made everything on the computer discoverable. Dr. Leming stated that previously legal counsel had advised to utilize the government issued computer for government issue work. Dr. Leming urged that the board purchase laptops.

#### **Other Business**

#### Next Regularly Scheduled Board Meeting

The Board of Medicine will meet on June 5-7, 2003 at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

#### Review of Cases Recommended for Closure

The Board members proceeded to review cases recommended for closure.

#### Adjournment

With no further business to discuss, the meeting of the Board of Medicine was adjourned.

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Harry C. Beaver  
President

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William L. Harp, MD  
Executive Director

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Deborah A. Ordiway  
Recording Secretary